



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street MC 4920 DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: NOV 30 2016

Release Number: 201710035
Release Date: 3/10/2017
UIL Code: 501.03-00

Person to Contact:
Identification Number:
Telephone Number:
In Reply Refer to:

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: February 28, 20XX

CERTIFIED MAIL – Return Receipt Requested

Dear :

This is a Final Adverse Determination Letter that your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) is revoked. Recognition of your exemption under IRC section 501(c)(3) is revoked effective October 1, 20XX.

Our adverse determination was made for the following reason(s):

You have not established that you are operated exclusively for an exempt purpose or that you have been engaged primarily in activities that accomplish one or more exempt purposes within the meaning of IRC section 501(c)(3).

Contributions to your organization are not deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending September 30, 20XX and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit taxpayeradvocate.irs.gov or call 1-877-777-4778.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

for,

Mary A. Epps
Acting Director, Exempt Organizations Examinations

Enclosure:
Publication 892

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations

Department of the Treasury

Date:

January 4, 2016

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

September 30, 20XX & 20XX

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Manager's name/ID number:

Manager's contact number:

Response due date:

Certified Mail – Return Receipt Requested

Dear _____:

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Margaret Von Lienen
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

EXPLANATION OF ITEMS

SCHEDULE NO. OR
EXHIBIT
Exhibit 1-7

NAME OF TAXPAYER

TAX IDENTIFICATION NUMBER

YEAR/PERIOD ENDED
20XX09 / 20XX09

ISSUE:

Whether is operated exclusively for tax-exempt purposes and should be considered tax-exempt under Internal Revenue Code section 501(c)(3).

FACTS:

was incorporated under the laws of the State of on November 21, 19XX as a non-profit domestic corporation.

Form 1023 was received by the Service on June 30, 20XX. In the answer to Part IV Narrative Description of Activities the organization stated, "It was incorporated for the purpose of serving the public of counties in . The services to be offered were to promote and facilitate economic and community development. The focus of revitalizing the will be to enhance the capabilities of organizations delivering services to the senior citizens and the disabled of counties. The , as a non-profit organization, will apply for grants for which a public agency is not eligible. These grants will then be used to support and expand programs focused on health, housing, nutrition, care and other regional issues facing today's elderly, especially those with low incomes."

According to the Determination letter the taxpayer was granted exemption as a 501(c)(3) organization with a public charity status of 170(b)(1)(A)(vi) on April 13, 20XX. The effective date of exemption is November 21, 19XX.

During the examination of the organization, Agent discovered that the organization was actively engaged in the rental of its facility from which it earns the major portion of its gross income. In addition, the majority of the expenditures of the organization are for the purpose of maintaining the property. The organization did not file Form 990-T to report its rental income. The Forms for the years of examination reports no expenses related to promoting and facilitating economic and community development.

During the course of the examination it was also discovered that the Form 990 (Schedule A) submitted by the taxpayer was not correctly prepared. Agent used data provided by the organization to prepare corrected Schedule A. The taxpayer was unable to pass the one-third support test in Part III of Form 990 Schedule A of any of the two years. The date used to compute the Public Support Percentage was obtained from previously filed Forms 990 of the Taxpayer. Additionally the taxpayer has shown little or no activity in the areas in which it applied for tax-exempt status.

LAW:

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(30-1(a) states that "In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

The organizational test states in that "An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its articles) as defined in subparagraph (2) of this paragraph:

- (a) Limit the purpose of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance or one or more exempt purposes." (Treas. Reg. § 1.501(c)(3)-1(b))

The operational test states that "An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." (Treas. Reg. § 1.501(c)(3)-1(c))

Treas. Reg. § 1.501(c)(3)-1(d)(i) states that "An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: (a) Religious, (b) Charitable, (c) Scientific, (d) Testing for public safety, (e) Literary, (f) Educational, or (g) Prevention of cruelty to children or animals."

Treas. Reg. § 1.501(c)(3) states that "An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated traded or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and extent of the activities

which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purposes of carrying on an unrelated trade or business is not exempt under section 501(c)(3)."

IRC §513(a) states that an unrelated trade or business is one which is "any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501."

Section 514(b)(1) provides, that for purposes of this section, the term "debt-financed property" means any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year. Section 514(c)(1) provides, that for purposes of this section, the term "acquisition indebtedness" means, with respect to any debt-financed property, the unpaid amount of—(A) the indebtedness incurred by the organization in acquiring or improving such property; (B) the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and (C) the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

Treas. Reg. § 1.509(a)-3(a) states that "Section 509(a)(2) excludes certain types of broadly, publicly supported organizations from private foundation status. An organization will be excluded under section 509(a)(2) if it meets the one-third support test under section 509(a)(2)(A) and the not more-than-one-third support test under section 509(a)(2)(B)."

Treas. Reg. §1.509(a)-3(a)(2) state that "An organization will meet the one-third support test if it normally receives from permitted sources more than one-third of its support in each taxable year from a combination of —

- (i) Gifts, grants, contributions, or membership fees; and
- (ii) Gross receipts from admissions, sales or merchandise, performance of services, or furnishing of facilities, in an activity that is not an unrelated trade or business (within the meaning of section 513), subject to certain limitations."

Taxpayer's Position:

Taxpayer's position is unknown.

Government's Position:

A Taxpayer will meet the one-third support test if it normally receives more than one-third of its support from a combination of gifts, grants, contributions or membership fees and gross receipts from admissions, sales of merchandise, performance of services, or furnishings of facilities, in an activity that is not an unrelated trade or business, subject to certain limitations.

Taxpayer claims to tax-exempt by virtue of being classified under IRC section 501(c)(3) and claims to receive more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions-subject to certain exceptions, and no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 19XX.

As part of the examination of _____, the Agent recalculated the Form 990 Schedule A for the tax years ending September 30, 20XX and September 30, 20XX (See Appendix 1). The data used to compute the Public Support Percentage was obtained from the previously filed Forms 990 of the Taxpayer.

The taxpayer was unable to pass the on-third test in Part III of Form 990 Schedule A for any of the two years. The taxpayer has shown little or no activity in the areas in which it applied for tax exempt status.

In order to pass the operational test, _____ must be operated exclusively for tax exempt purposes and any activities that are not in furtherance of an exempt purpose must be insubstantial as per Treas. Reg. §1.501(c)(3)-1(c).

Organization has failed to consistently file Form 990-T to report its rental activities as the property is debt financed.

The lack of any financial support and the fact that there is no discussion of the organizations stated purpose shows that there is little or no activity in conducting the main purpose for which the organization applied for exemption.

The facts have shown that the primary purpose of this organization is to operate a rental service of its property. Due to the extent of rental activities, the lack of any activity or discussion of any non-profit services and the lack of funds geared toward charitable activities it has been determined that the Taxpayer has failed to meet the test described in Treas. Reg. §1.501(c)(3)-1(e) because the organization is "organized and operated for the primary purpose of carrying on an unrelated trade or business." cannot be considered to be exempt under section 501(c)(3) because its primary purpose is carrying on an unrelated trade or business, the rental of property.

Conclusion:

Based on a review of the organizations books and records
exempt under IRC §501(c)(3). The tax exempt status for this organization should be revoked as of October 1, 20XX.

is not tax